

# 2014-02-27 CHAIRMAN'S DISCUSSION DRAFT FOR R18-9-A316

## **I. Background:**

The A316 Subcommittee of OWAC has convened by telephone conference call nine times between December 2012 and February 2014. Work has focused on 5 Topic Categories established in late 2012. Agendas and meeting notes have been maintained by the subcommittee chair through the December meeting. Meeting notes for the January and February 2014 conference calls are pending discussion with the A316 Subcommittee Sponsor.

The Topic Categories are as follows:

- 1 - Buyer and Seller Responsibilities,
- 2 - Repairs,
- 3 - Training and Certification,
- 4 - Standards and Definitions, and
- 5 - Enforcement.

The A316 Subcommittee Charter is found in [Appendix C](#).

Subcommittee discussion has focused on determining appropriate questions relevant to each topic category and determining consensus preferences. Participants in subcommittee teleconferences have included current and past OWAC appointees and other stakeholders involved with the onsite wastewater industry. A total of 12 have participated in at least one conference call, however, only about half are typically present. Public representatives usually participate in teleconference discussion as do OWAC members.

The subcommittee process, while not complete, is at a point where rough cuts can be identified for program modifications. This report is:

- solely the chairman's interpretation of key findings to date, with apology for errors, omissions, typos, misspelling and blurred vision.
- very preliminary, to be presented/discussed during the A316 Subcommittee teleconference on March 4, 2014 and

- to offer approaches for possible rule revisions based on the 5 Topic Categories.

During the teleconference discussions, division of the rule update appears feasible by both short (quick fix) and long term actions. Such division can facilitate early OWAC consideration of recommendations to ADEQ for easy rule and policy adaptations. Considerable work will be needed to refine and plan implementation of major revisions to R18-9-A316.

## **II. Point of Beginning:**

As it stands, R18-9-A316 is the technique for administratively implementing R18-9-A304 as is stated in subsection R18-9-A316.A;

### **R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities**

- A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304.

## **III. Missing/ineffective Program Components:**

Questions have been raised about related program gaps pertaining to OWTF program administration and operations. While some actions may seem out-of-scope for R18-9-A316, many conspicuous program deficiencies pertain to missing/ineffective elements which could be incorporated in a reorganized R18-9-A316 and 14 A.A.C. 1. The following actions need consideration (typically in rule, and some with statutory updating):

- improve transfer inspection process timeframes and notifications;
- rationalizing the operational differences between the Pima County transfer ordinance and R18-9-A316;
- address the problem of perpetual facility life for 1.09 GPs and Type 4 OWTFs, and the associated *business problem* it creates for delegated agencies;
- unify onsite wastewater and reclaimed water facilities to eliminate the current regulatory bifurcation pertaining to inspection and transfer of ownership;
- address chronic inspection deficiencies;
- address inadequate local agency notification about system deficiencies and repairs;

- fully incorporate in R18-9-A316 the relevant parts of R18-9-A303 Renewal of Discharge Authorization, and R18-9-A304 Notice of Transfer for 1.09 GPs and Type 4 OWTFs;
- reorganization of the 14 A.A.C. 1, Water Quality Protection Fees for 1.09 GPs and Type 4 OWTFs so such funds can be directly received by local agencies; and
- update delegation of program functions and duties between ADEQ and local agencies to include financial aspects of collecting and sharing collected revenue.

#### **IV. Key Recommendations Received for Early Action**

Quick fix actions have been updated by Lowell Fagen in January 2014. These appear herein as [Appendix A](#). Action by the A316 Subcommittee is pending. Associated changes may require increased ADEQ responsibility for inspector training and list management. Additional supporting information is discussed herein summarizing the Coconino County pilot study, [Appendix B](#).

#### **V. Summary of Findings:**

1. Buyer and Seller Responsibilities - consensus is pending, though responsibility for inspection could be provided for either the Seller or Buyer. Approach could include:
  - a. If a Buyer offer is made prior to completion of the Seller's Report of Inspection (ROI) pursuant to the current R18-9-A316, Buyer becomes responsible for the inspection and repairs, and subject to the terms of an executed real estate contract signed by the Seller and Buyer. Inspection responsibility for a "distressed ownership" property would typically become a Buyer responsibility.
  - b. In all instances the Buyer remains responsible for filing the NOT.
2. Repairs - shall be made if inspection determines need. Policy is necessary for classifying/detecting/reporting/enforcing violations of R18-9-A309.A, especially R18-9-A309.A.9.b, and R18-9-B301.I.
3. Training and Certification - Topic continues to be under subcommittee discussion. Actions may include refinements such as:
  - a. prescribe ADEQ program responsibilities and funding,

- b. prescribe ADEQ program administration including listing of qualified inspectors,
  - c. prescribe ADEQ compliance responsibilities, and
  - d. expand the training program to include 2 inspector grades (systems with 4.02 GP only technology) and all other systems (1.09 GP, 4.03 - 4.23 GPs, and reclaimed water facilities, if unified elsewhere in rule).
4. Standards and Definitions - To be discussed. OWAC members Dawn Long and Joelle Wirth are working on questions.
  5. Enforcement - Topic has been expanded to include A316 matters and overall program under a separate subcommittee.

## **VI. Chairman's additional thoughts:**

- A. Perpetual life of 1.09 GPs and Type 4 OWTFs and residential gray water facilities require clear regulatory tools to efficiently verify compliance with operational practices (BMPs for 1.09 GP, all Type 4 OWTFs, and Type 1 Reclaimed Water General Permit, if unified elsewhere in rule), and processes to issue effective orders to require facility owner action such as for a new application (NOI), repairs, or corrective operational measures.
  - Facility inspection per R18-9-A316.C is insufficiently precise to ensure unmistakable satisfaction of the criteria in R18-9-B301.I, R18-9-A309.A, and R18-9-711 as applicable. Uniform facility inspection procedures should apply, whether for a property transfer or other purposes. Inspection forms might differ, based on inspection purpose, such as:
    - regulatory status confirmation,
    - transfer of ownership,
    - routine compliance, and
    - reissuance of a Discharge Authorization to new owner.
- B. Perpetual life general permits and a complaint-driven inspection program is a *bad business model for local agencies*. 18 A.A.C. Chapters 9 and 14 provide a revenue stream to ADEQ for individual permits and retained Type 2 and 3 general permits. Fees are collected

for annual registration of individual permits and periodic revenue from renewal and transfer of Type 2 and Type 3 GPs:

- Current rules for the 1.09 GP, Type 4 OWTFs, and residential gray water facilities make no provision for funding a program for routine compliance or complaint inspection, see R18-9-A303.B and R18-9-711;
- ADEQ and local agencies responsible for 1.09 GP, Type 4 OWTFs, and residential gray water facilities have no funding for program administration, updating, training, compliance assistance, etc;
- All Type 2 and 3 General Permits (never delegated to local agencies, thereby retained by ADEQ) have prescribed renewal periods of 2 to 7 years, and renewal fees ranging between \$500.00 and \$2,500.00 per R18-9-A303.C and R18-14-108, including Table 4;
- Individual permits, wholly administered by ADEQ have stipulated annual registration fees in rule, as shown in the box below. If a similar program would apply to all onsite wastewater systems based on 5% of the smallest APP Discharge flows and Annual Registration Fee in R18-14-104 Table 2 (equivalent to the typical OWTF sized between 150 - 500 gpd) the comparably scaled annual registration fee would be \$25.00. Annual revenue for the approximately 500,000 systems (1.09 GP and Type 4 OWTFs) subject to the ARS, would annually produce \$12.5 million. A lesser rate may be adequate, but the point is that such *revenue could be shared among the delegated local agencies and ADEQ for program administration, updating, training, inspection, compliance assistance, etc.* This could bootstrap the statewide program into the 21st Century from its current Rodney Dangerfield status. *Such a program could be feasible if fees were collected once every 5 years or at the time of title transfer.*

#### **R18-14-104. Annual Fees for Water Quality Protection Services**

##### **A. Annual Registration Fees.**

The annual registration fee required under A.R.S. § 49-242 is in Table 2:

**Table 2. APP Annual Registration Fees**

Discharge (in Gallons)	Annual Registration Fee
3,000 to 9,999	\$500
10,000 to 99,999	\$1,000
100,000 to 999,999	\$2,500
1,000,000 to 9,999,999	\$6,000
10,000,000 or more	\$8,500

C. Transfer of Ownership is a transfer of title to another owner of a property, including the onsite wastewater treatment and reclaimed water facilities, notwithstanding any permitting status associated with the property. In other areas of general regulation, such as a motor vehicle title and license transfer, or a credit card holder name or address change; the administrative authority issues documents and charges fees as provided by law or contract (the cardholder agreement). In both cases these instruments are another form of the general permit program. Issuance of the Notice of Transfer should be administratively accompanied by a Reissued Discharge Authorization with appropriate provisions, in a manner resembling the Pima County process. Revision of R18-9-A316 could commemorate such a process, and authorize local agency fee collection for a Reissued Discharge Authorization. This approach could become the first step to modernize the A316 institutional paradigm for delegations and to help develop local agency and ADEQ capacity for updating technical standards and processes for permitting using the current performance-based general permits framework.

## **VII. First Cut Approach**

**Step 1**, the current A316 should be changed to R18-9-A316.1 generally an amplified overview of R18-9-A316 which becomes OWTF Program Administration and Compliance.

**Step2**, add R18-9-A316.2, largely based on the current R18-9-A316.B - G with the following changes:

- Incorporate changes recommended by Lowell Fagen, appearing in **Appendix A**. He recently recognized that it could also made a recent recommendation that the inspection could be ordered by either Seller or the Buyer as a part of the sales contract, probably solving some of the complications experienced over the past 7+ years.
- Rework R18-9-A316.B.1 and 2 to make ADEQ more accountable, specifying inspector recertification periods, require written tests to be taken and passed for all recertification classes, and specify acceptable inspector training/testing programs. This may require new legislation, and addressing deficient inspector performance described in **Appendix B**.
- Delete all of R18-9-A316.B.3. Upgraded inspector training, ADEQ leadership along with "beefed-up" provisions in R18-9-A316.B.1 and 2 should fix things.
- Modify scope and details of an inspection in R18-9-A316.C, require inspector to obtain copy of applicable county records before performing inspection, and require preparation of a to-scale plot plan sketch if no accurate, to-scale plot plan is on file at the county.
- Modify R18-9-A316.D to include requirement for inspector to provide, within 1 business day of any inspection, a copy of **all Report of Inspection forms**, even if repairs/modifications are to be subsequently made. This should minimize obfuscation by those "shopping" for a "clean" inspection report and those who may have made repairs without a required a local permit.
- Modify R18-9-A316.E so that the Notice of Transfer form is changed to also be a new owner's request for reissuance of the General Permit Discharge Authorization by the county agency (or ADEQ if facility type is not delegated to a local agency).
- Review Article 3, Parts A and B, and the fee rule to ensure necessary changes are made to ensure all 1.09 GP OWTFs are covered by the transfer inspection program.

**Step 3**, add new R18-9-A316.3 to cover an enhanced OWTF administrative program including:

- at least 2 inspector training categories (per A316 Subcommittee discussion);
- more complete inspection scope and details, suitable for **all OWTF inspections**; and
- incorporate a better business model for counties by transferring all GP Type 1 and Type 4 OWTF administration details.

Fees for the Notice of Transfer would still be prescribed 18 A.A.C. 14, however, counties could charge a fee to Reissue a Discharge Authorization, either due to expired permit term, or to a new owner. The rule should also specify other administrative terms and conditions for old/grandfathered facilities, such as sun setting 1.09 GPs and obsolete/ problematic Type 4 GP technologies. Change R18-9-A303.B to exclude OWTFs. Add new R18-9-A303.D stating that all Type 1 and Type 4 OWTF renewals are specified in R18-9-A316.3 and renumber existing R18-9-A303.D and change to read ". . .in subsection (B)(1) **or R18-9-A316.3**, the Discharge . . .".

Change R18-9-A304.A.2 and C to be less wordy and direct all Type 1 and Type 4 OWTFs to R18-9-A316.3.

The new R18-9-A316.3 could initially be limited and later expanded to include multiple training categories and business model improvements.

In anticipation of Reissuing Discharge Authorizations, counties could begin adopting new fees which will better support a balanced overall program. Similarly, steps could be taken to establish lists of inspectors (even relevant supplemental test questions), as some counties do for soil testers and designers.



## **Appendix A - Quick Fix Recommendations by Lowell Fagen, January 2014**

SUMMARY OF UPDATED A316 ISSUES FOR CONSIDERATION (Lowell Fagen, 1/07/14):

### TIMELY DELIVERY OF THE ROI TO SELLER & BUYER; A316(C) & (D)

INTRO: Parts of current ADEQ rule are behind the curve of newer technologies, including today's commonly used electronic methods of delivering documents.

OVERVIEW OF A316(C) & (D): The instructions as to timing of delivery of the ROI to Seller are ambiguous ("The inspector shall...provide it to the person transferring the property.") -- Ditto re to timing of delivery of ROI to the Buyer ("Before the property is transferred...")

By rule, the sequence of ROI delivery (Inspector to Seller, Seller to Buyer) may seem logical in theory. However, in many real world transactions, it has not always proven to be workable -- often because of ROI delays, Seller to Buyer: i.e. Seller overlooks/loses or forgets to send ROI to Buyer; Seller is on vacation or unavailable when ROI is delivered...or other snags preventing Seller's timely delivery to Buyer.

PROBLEM: Reports from many parts of the state (not all) indicate the ROI is often delivered to the Buyer only a day or two -- sometimes the day of COE; typically when the Buyer is signing a blizzard of other closing documents at the escrow office.

RESULT: Buyer's late receipt of this critical disclosure report does not allow adequate time for Buyer to review/understand...or respond to the ROI.

Joelle's "Notice of Transfer Pilot Study" was revealing; and concluded that "the inspection program is not functioning as it was intended." It's likely this conclusion may also be common in other areas.

Based on Coconino county's review/analysis of home buyer's complaints, procedural and other errors, there are multiple reasons for confusion. Along with my observations, these include but not limited to: (a) The regulatory process, forms & lack of enforcement/oversight; (b) Inspector training deficiencies; (c) Inadequate review of completed ROI & NOT Forms by real estate agents, plus questionable counseling of their clients; and (d) The AAR On-Site WWT Facility Addendum which calls for the inspection to be performed, "no later than three (3) days prior to Close of Escrow."

(Note: This Addendum is required when Realtors submit a Buyer's offer for a property served by an onsite system. The Addendum's terms are designed to basically track with ADEQ rule A316. AAR's planned update of the Addendum has been on hold pending potential ADEQ rule changes.)

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Therefore, I'm proposing OWAC consider a recommendation to ADEQ to revise rule **A316** to reflect common practices/procedures that have evolved in many counties concerning the timely delivery of the ROI & related documents to Seller & Buyer, such as:

- \* Inspector emails the completed ROI & related documents to Escrow;
- \* Upon receipt, Escrow transmits to Seller & Buyer; and to real estate agents;
- \* Some Inspectors email the ROI direct to Seller & Buyer as well as Escrow.

So, what would a revised rule look like? An example of new language might be: "Inspectors shall ensure that the completed Report of Inspection and related documents, including the Notice of Transfer, are transmitted without delay to the Seller/Transferor, the Buyer/Transferee and the Title Company."

(Note: Many inspectors are completing Sections 5, 6 & 7 of the NOT & submitting it to Escrow along with the ROI. This streamlines the process and can help avoid the Buyer filing an incomplete/inaccurate NOT.)

Such procedures could eliminate unnecessary delays in delivering documents to the parties; yet essentially complies with intent of current rule...and should be of minimal or no cost to the Department...in my opinion.

#### DOCUMENTS IN SELLER'S POSSESSION

A316(D)(2) states: "Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment Facility."

Limiting the source of documents to those "in the person's possession" often eliminates the Buyer's awareness of relevant disclosure issues...because:

- (a) Relatively few owners have complete permitting documents, "in their possession" -- in particular if the system was installed prior to 1/01/01;
- (b) Even those having some documentation, their records are often incomplete and/or misleading...but not recognized as such by uninformed Buyers & Sellers; and
- (c) Tends to encourage lazy Sellers and listing agents.

To enhance full disclosure, SUGGEST A REVISION OF (D)(2) be considered, such as: "Documents in the person's possession, and any documents of record available at the appropriate county or state agency, relating to permitting of the on-site wastewater treatment facility, operation and maintenance information (manual), and any records of repairs or servicing for the Facility."

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### **NOTICE OF TRANSFER PILOT STUDY - DATA FINDINGS**

The Coconino County Public Health Services District (CCPHSD) has been gathering data on the ADEQ Notice of Transfer (NOT) process for septic system inspections in our county. We began this study due to the fact that the NOT's and Report of Inspections (ROI) that were being submitted did not agree with the information that was currently in our records. After cross referencing the NOT's and ROI's with CCPHSD records, here is what was found over a 4 month period:

- 1) 82 total submittals – 43 NOT's with ROI, 39 NOT's only. Out of the 82 submitted only 12 were correct the first time. 85.4% had errors.
- 2) The errors ranged from a date being transcribed incorrectly to an unpermitted septic system being inspected.
- 3) Out of the 39 NOT's only 25.6% of those submitted correct the first time. 74.4% had errors.
- 4) Out of the 43 NOT's w/ROI only 4.6% of those submitted were correct the first time. 95.4% had errors.
- 5) We are still waiting for 35 NOT's (42.7%) to be corrected and returned.
- 6) 12 of the submittals did not have permit records and only 4 (33%) of those were correct the first time.
- 7) Question 7 on the ROI's had the highest frequency of incorrect responses at 28%. Question 7 on the NOT's had the highest incorrect rate at 51%.

#### **OTHER FINDINGS:**

- 1) Most inspectors could not tell the difference between the date issued of a CA (Approval to Construct) and a DA (Verification of General Permit Conformance). They are just not familiar with "permit speak"
- 2) More than 1 inspector expressed frustration with filling out the ROI.
- 3) Most inspectors don't really see the importance of the ROI. They are just going through the motions.
- 4) The title agents do not know what they are looking at with a ROI so the information is just transcribed incorrectly.
- 5) Often took multiple times to get the information corrected if not prompted with the correct answer.
- 6) Qualifications and education should be improved and maintained to do inspections.
- 7) Most sketches and maps submitted did not contain a lot of detail.

In many instances, if contact was not made over the phone, the issues that needed to be corrected took multiple times to correct, prolonging the transfer process. Most inspectors and applicants expressed the difficulty in finding the correct information in the permits. Finally, the data compiled shows the need for more training for the inspectors and a simplified NOT and ROI form.

## **Appendix C - OWAC A316 Subcommittee Charter, approved Feb. 21, 2014**

**PURPOSE:** The mission of the OWAC A316 Subcommittee is to consider the current program pursuant to A.A.C. R18-9-A316 and make recommendations to the Onsite Wastewater Advisory Committee (OWAC) sponsored by the Arizona Department of Environmental Quality.

### **ONSITE WASTEWATER ADVISORY COMMITTEE GUIDANCE:**

- In order to promote subcommittee focus, the A316 Subcommittee was instructed by OWAC to consider the following Topic Categories pertaining to the R18-9-A316 regulatory program:
  - 1 - Buyer and Seller Responsibilities,
  - 2 - Repairs,
  - 3 - Training and Certification,
  - 4 - Standards and Definitions, and
  - 5 - Enforcement.
- Recommendations, including related FAQs requested by ADEQ, for OWAC consideration shall be prepared in writing by the A316 Subcommittee to address both short-term and long-term recommendations to improve the efficiency, effectiveness, and public acceptance of the onsite wastewater treatment facilities program related to A.A.C. R18-9-A316.

### **MEMBERSHIP:**

- The A316 Subcommittee shall be those appointed by OWAC.
- Other members of OWAC are *ex officio* members of the subcommittee provided the person regularly participates in subcommittee meetings.
- Persons engaged in the Arizona onsite wastewater industry who are invited to participate by an OWAC-appointed participant.
- Persons from the general public who respond to an ADEQ Public Notice about the activities of the A316 Subcommittee.

**PROCEDURES:** The A316 Subcommittee activity shall conform to State open meeting requirements. This includes a Public Notice posted on the ADEQ website with a Meeting Agenda, Agenda Attachments, and Meeting Notes, as appropriate. Meetings shall be conducted with those present for the agenda-specified time and place, and may include conference call format. Meeting records shall be compiled by the person who prepared the Meeting Agenda, or is otherwise designated by those participating in the announced subcommittee meeting.

### **LEADERSHIP:**

- The A316 Subcommittee shall have a designated Sponsor and Chairperson, appointed by OWAC, for planning and conducting activities of the subcommittee.
- In all instances, the person preparing the A316 Subcommittee Meeting Agenda and meeting materials shall make arrangements with the designated ADEQ staff contact to ensure proper posting on the ADEQ website.
- In general, the Chairperson shall prepare notifications, agendas, and associated documents for meetings; and generally lead meetings and compile the meeting notes.
- The Subcommittee Sponsor or other regularly participating OWAC Member may prepare a notification, agenda, and associated documents for a meeting of the A316 Subcommittee.
- If a meeting of the A316 Subcommittee is conducted by the Subcommittee Sponsor or other regularly participating OWAC Member, that person shall lead the meeting and compile the meeting notes.
- If the A316 Subcommittee membership or leadership roles are modified, the new leaders shall continue the A316 Subcommittee evaluation process through completion of pending written recommendations based on available meeting records.